

**Town of Foxborough  
Conservation Commission Minutes  
February 1, 2010**

**Members present:** Bob Boette (Chairman), Alan Curtis (Vice Chairman), Harold Blomberg, Doug Davis, Judi Johnson and Eric Nelson

**Absent:** Jim Marsh  
Bill Hocking, Temporary Conservation Manager

**Also present:** Jane Sears Pierce, Conservation Manager

**Meeting Opened**

Bob Boette opened the meeting, which was held in the Selectmen's Meeting Room in Town Hall, at 7:20 p.m.

**Continued Request for Determination – 33 Hayden Drive**

Betsy Magnuson was in attendance; Richard and Betsy Magnuson are the owners of 33 Hayden Drive. They are proposing to construct a 15 to 20 foot extension of their backyard, which is located within the 100 foot BVW buffer zone. They will need to fill a narrow strip of land (to the left side of the house) with a steep drop off towards the wetlands to allow trucks to access their backyard to dump the fill and perform site grading (their septic system takes up most of the front yard).

Jane viewed the property and found that the left side of the property was narrower and more steeply sloped than she had anticipated. She determined that work vehicles would not be able to access the backyard from that side of the house. Mrs. Magnuson was advised to resubmit her Request for Determination with the Work Description showing that the backyard would be accessed from the right side of the property, rather than the left.

**Motion** by Judi Johnson (Positive Determination) that Conditions #4, #5 and #6 on the State form and Condition #2 on the Town form apply. Seconded by Allan Curtis. **Vote: 6:0:0**

**DEP #157-486, ANRAD, (off) Morris Street (site of proposed Nadia Estates 40B Project)**

The applicant's representatives, Seth Dufort of Outback Engineering and Bob Gray of Sabatia, Inc. were present.

Seth informed the Commission that he and Bob Gray had met earlier in the day with Jane and Bob to review the wetland lines. He then reviewed his recently submitted Overlay Plan ("Assessor's Map 20, Lot 409 & Map 28, Lot 530 off Morris & Mechanic Streets in Foxborough," prepared by Outback Engineering, dated 12/16/09, received by the Commission on 1/25/10), explaining that the plan's blue lines were Bill's suggested delineations, the red lines were the approved lines previously delineated by Bay Colony in 2002 (previous ANRAD), and the black lines were his currently proposed delineation lines. Although Bill and Jane had put up some flags, they were not represented on the plan. He told the Commission that during today's site review, both parties had disagreed on where several flags in the western portion of the site should be located.

Jane explained that she had called Jim Pavlik (OutBack Engineering) earlier in the day to discuss whether a site visit should be performed (per previous hearing's discussions). During their discussion she told Jim that, in an effort to move the process along, she (and Bob B. and Bill) would meet Seth on site but she was only prepared to review the site's vegetation and evidence of hydrology at this time (i.e. not soils), due to mid-winter's frozen conditions (per the DEP delineation manual's recommendations for winter delineations). After speaking to his colleagues, Jim called her back to tell her that both Seth and Bob Gray wanted to meet at the site at 1:30 that afternoon.

Although Jane reminded Seth and Bob at the beginning of their site visit that she was not prepared

to review any soils on this date, Seth brought his auger along anyway and took some test borings, to try to get soil samples. It is the Commission's opinion that it is difficult to get a valid soil sample in the winter. Jane explained that she had been relying on Bill's assistance because of his many years of experience in delineating Foxborough's wetlands. Unfortunately, at 12:50 Bill's wife called to inform Jane that their four year old grandson (they were babysitting) was being taken by ambulance to the hospital, so Bill (who was accompanying him) would not be able to attend the meeting.

Jane apologized to Seth and Bob Gray for the day's unfortunate events, stating that she would be happy to go out for a longer visit during the following week. She continued, stating that there was really only one area that they didn't agree on: an area that was adjacent to the eastern "shore" of the large wetland on the western side of the property. This area, dominated by high bush blueberries, swamp azaleas and fetterbush, was relatively flat, with a slight pit and mound topography and appeared to have a high ground water table. She reported that the rest of the site was pretty straight forward and that she agreed with most of Seth's wetland flags.

Seth believed that based on this day's site visit, the Commission wanted to wait until the spring, but he did not understand why a determination could not be made now. Jane, who wanted to have Bill's input, offered to meet with Seth so that they could spend more time on their review, adding that today's site visit had been rushed because she was in the midst of preparing for this evening's meeting. She reminded Seth that she had informed Jim earlier in the morning that she would not be prepared to review soils during today's site visit.

Bob Gray stated that he was troubled that only a single parameter (vegetation) had been reviewed, explaining that they needed to evaluate according to the Wetlands Protection Act regulations. What bothered him about the area of dispute was that there was no question in his mind about the conditions of the soils.

Jane read excerpts of the DEP delineation guide's page about winter delineations, which states "DEP recommends that BVW delineation be avoided if possible when deep snow cover or "deep freeze" conditions exist." Assuming that they existed, she was not prepared to review soils on this date. Bob Gray argued that they were able to dig soils today.

Jane reiterated that when she had spoken to Jim Pavlik about this, she told him that she was getting ready for the meeting, but if they wanted her to meet them on site, she would not be prepared to review the soils. Regardless of this fact, she is used to using a narrow spade to dig a hole, make a clean slice of soil to observe the layers and then observe any water that either seeps through the walls or the bottom of the hole. In addition, advanced wetland delineation classes that she has taken in the past have always advised NOT to use augers to review soils, since they tend to mash up the soil layers. Admittedly, she was not used to reviewing soils in the winter since the applicants that she had dealt with in the past had always agree to wait until springtime to review wetland lines.

Seth said that he thought that Jane had valid points, that in some areas of the site it would be easier using a spade, but some areas are very stony. He still thought that it was obvious that the areas in dispute did not have hydric conditions.

Judi told Seth that the Commission has been told before (after tests) that there were no wetlands when, in fact, there were wetlands. Bob Gray read excerpts of the WPA regulations (10.55(2)(c)2) regarding submissions by a credible source.

Judi reminded Bob Gray that the Commission has discretionary authority and did not need to use hydric soils unless they chose to; they could use other hydric indicators such as standing water in hand-dug holes instead. Jane added that, during the site visit they had only seen tiny (augered) cores of soil and were not able to see whether any water was leaking into the hole.

Bob B. asked when the ANRAD had been filed and was told it was filed in late December. The delineation had been performed in November. Doug stated that he was not comfortable reviewing

the soils, using only augered cores, noting that in the area of dispute, flags were 40 feet apart at some points.

Seth stated that it had been quite a while since the ANRAD was filed. During today's visit, he realized that the Commission had put out new flags, asking "What's going to happen next time we go out?" Doug replied that wetland reviews take time; the Commission wants to get it right.

Bob Gray stated that maybe the quickest way to resolve this would be to go before the DEP for arbitration. Jane indicated that if they wanted to do this, it would be their prerogative, but it would delay things even more. Seth agreed with Bob Gray, stating that he wanted to get the DEP involved.

Jane stated that the DEP would not get involved unless the ORAD was appealed, adding that she just didn't feel comfortable reviewing this information without Bill. He could not help the fact that he had an unexpected emergency. Bob B. indicated that he wanted to set another time to meet at the site.

Seth stated that he wanted the Commission to close the hearing and make a decision. Jane explained that if the applicant did not give permission to continue the hearing, then the Commission would be forced to close the hearing. After closing the hearing, they would not be able to accept any new evidence and they would need to make their decision and issue an ORAD within 21 days. In fact, the Commission would need to meet sometime before their next scheduled meeting on February 22, since the permit's mailing needed to be postdated by February 22, 2010 (if it was signed that night, it wouldn't be mailed/post-dated until the 23rd).

Judi wanted to know what Seth's motivation was to close the hearing so soon, since Jane had offered to meet with him at the site next week. She also did not understand why they wanted to involve the DEP. Several of the members indicated their discomfort in closing the hearing before being able to properly review the wetland lines.

The Commission discussed when they would all be able to meet (before 2/22). Jane reminded them that a quorum of the same members who had attended both hearings would need to be present.

**Motion** made by Allan Curtis to close the ANRAD hearing for DEP #157-486, (off) Morris Street. Seconded by Judi Johnson. **Vote: 6:0:0**

*8:30 p.m. - Seth Dufort and Bob Gray left the meeting.*

Jane told the Commission that her friend, who used to work at the NHESP, had visited the site with her during the previous week. She had indicated that it is definitely a vernal pool and that it looked like it could also be marbled salamander (an endangered species) habitat.

Jane had a plan: the Commission could approve the old Bay Colony line (red line), which was included on the applicant's last plan submission, since the Commission had recently reviewed and approved that line. She advised against making any changes to Seth's vernal pool delineation and mentioned that since they (Seth and Bob) asked her repeatedly whether they should refer to it as ILSF, she would look into referring to it as ILSF or Pond. Ponds need to be 10,000 square feet or larger; she quickly calculated the vernal pool's size to be approximately 30,000 plus square feet.

The Commission liked this idea, but wondered whether the older (red) line would need to be re-flagged in the field. Bob stated that some of the old flags were still "out there," but missing flags could be re-set.

Jane told the Commission that the DEP will stick to their guidance documents and have indicated that they want to uphold Commission's decisions and would do so if the Commissions followed their guidelines. Doug stated that they could appeal the whole thing, but Jane didn't think that they would appeal their own lines, if approved.

Bob determined that they should aim for a meeting on the 11<sup>th</sup>, adding that it would not allow much time for Jane to research and draft the permit. Jane indicated that she would draft an ORAD and then distribute it to the Commission for their review. They could then send their revisions to Jane, only. She reminded them that they could not make any decisions by email. The Commission could then review the document at their next (newly scheduled) meeting, sign the signature page, and then Jane could make their revisions and issue the permit on the 19th.

9:00 p.m. - Eric Nelson left the meeting at this time.

### **Documents to be Signed**

#### **Voucher for MACC Annual Membership**

**Motion** by Doug Davis not to sign MACC voucher for Annual Membership Dues. Seconded by Allan Curtis. **Vote: 5:0:0**

#### **DEP #157-452 - 96 E. Belcher Road, OoC Extension Permit (Bylaw)**

**Motion** by Doug Davis was made to issue a one year Order of Conditions Extension Permit for DEP File #157-452. Seconded by Judi Johnson. **Vote: 4:0:1**  
(Harold Blomberg did not participate in this vote).

### **January 25, 2010 Minutes**

**Motion** was made by made by Judi Johnson to accept the January 25, 2010 minutes. Seconded by Harry Blomberg. **Vote: 4:0:1**  
(Doug Davis abstained from voting as he did not attend the meeting.)

### **Annual Report**

Jane provided the Commission with a draft Annual Report, who accepted it as written.

### **Foxborough Conservation Land Rules and Regulations**

Jane showed the Commission a copy of the revisions that she had included on their on-line Conservation Land Rules, explaining that she had changed the order of the rules and added headings to make them easier to read. After reviewing her modifications, Doug asked her to take out the leash law reference and replace it with "Pets must conform to Town regulations."

**Motion** by Doug Davis to make the pet reference change, as discussed, in the Conservation Land Rules and Regulations document. Seconded by Allan Curtis. **Vote: 5:0:0**

### **Ethics Exam**

Allan Curtis has taken the exam. Doug Davis was planning to take advantage of the recently granted extension to April, 2010.

### **Hunting on Conservation Land**

Bill would like to discuss adding hunting to the Harold Clark Forest and the Law/Wolf Meadow property off Forest Road and Mill Street. The Commission was provided with current hunting information and will continue the discussion to the next meeting that Bill attends.

**Meeting adjourned at 9:50 p.m.**

Draft minutes submitted by: Judy Leahy on 2/10/10

Approved by Commission: 2/22/10